

# CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

ROBERT J. DEL ROSARIO and  
MELANIE DELROSARIO,

## DEFENDANTS

JAPAN AIRLINES INTERNATIONAL  
CO., LTD.,

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

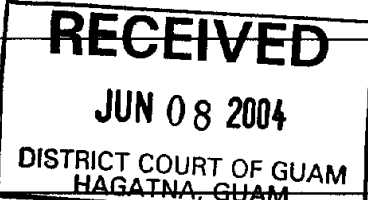
COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

LAW OFFICES OF GORMAN & GAVRAS  
2nd Floor, J & R Building  
208 Route 4  
Hagatna, Guam 96910

ATTORNEYS (IF KNOWN)



## II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |   |                                       |                            |   |                            |                                       |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
|   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

## IV. NATURE OF SUIT

(PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input checked="" type="checkbox"/> 310 Airplane <input checked="" type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury — Med. Malpractice <input type="checkbox"/> 365 Personal Injury — Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 861 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>HABEAS CORPUS:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS — Third Party 26 USC 7609

## V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify) \_\_\_\_\_  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

COMMON CARRIER NEGLIGENCE

## VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO

## VIII. RELATED CASE(S) IF ANY

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE

JUNE 8, 2004

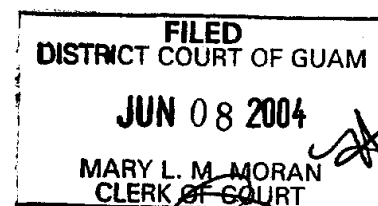
SIGNATURE OF ATTORNEY OF RECORD

*[Handwritten Signature]*

FOR OFFICE USE ONLY

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LAW OFFICES OF GORMAN & GAVRAS  
A Professional Corporation  
2<sup>nd</sup> Floor, J&R Building  
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Attorneys for Plaintiffs  
ROBERTO J. DEL ROSARIO and  
MELANIE DEL ROSARIO



IN THE DISTRICT COURT OF GUAM

ROBERTO J. DEL ROSARIO and  
MELANIE DEL ROSARIO,

CIVIL CASE NO. **04-00028**

Plaintiffs,

vs.

COMPLAINT FOR DAMAGES  
and DEMAND FOR JURY TRIAL

JAPAN AIRLINES INTERNATIONAL  
CO., LTD.,

Defendant.

COME NOW Plaintiffs, ROBERTO J. DEL ROSARIO and MELANIE DEL  
ROSARIO, by and through their counsel and by way of their Complaint, allege as  
follows:

**GENERAL ALLEGATIONS**

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. Sections 1331.
2. At all times material hereto Plaintiffs ROBERT J. DEL ROSARIO and MELANIE DEL ROSARIO were and are Citizens of the United States of America and residents of Guam.

3. Upon information and belief, at all times material hereto, Defendant JAPAN AIRLINES INTERNATIONAL CO. LTD., was and is a foreign corporation incorporated in Japan and authorized to do business in Guam and was actively engaged in the business of airline transportation.

4. At all times mentioned herein and upon information and belief, said Defendant JAPAN AIRLINES INTERNATIIONAL CO. LTD. is liable herein as principle, officer, agent, master, servant, employer, employee and partner. Furthermore, the corporate Defendant is liable for the acts of its employees and agents under the theory of Respondeat Superior.

**COUNT I**

5. Plaintiffs re-adopt and re-allege each and every allegation as stated in paragraphs 1 through 4 as if fully set forth herein.

6. Upon information and belief, on July 20, 2002, at all times material hereto, Defendant JAPAN AIRLINES INTERNATIONAL CO. LTD. was a common carrier engaged in the business of transporting paying passengers in aircraft it owned, leased, operated, managed, maintained, and/or controlled. As a common carrier, Defendant JAPAN AIRLINES INTERNATIONAL CO. LTD. was obligated to provide the highest degree of care to its passengers.

7. Upon information and belief, on July 20, 2002 and at all times material hereto, Defendant JAPAN AIRLINES INTERNATIONAL CO. LTD. was authorized to do and was doing business in Guam for the purpose of providing transportation/aircraft to passengers and as a common carrier was obligated to provide the highest degree of care to its passengers.

8. On or about July 20, 2002, Defendant owned, leased and/or was responsible for Flight #981, which was used to transport its passengers as a common carrier, and which aircraft Defendant operated, maintained, and/or otherwise controlled by and through agents and/or employees, acting within the course and scope of their employment.

9. On or about July 20, 2002, Defendant accepted Plaintiff ROBERTO J. DEL ROSARIO as a ticketed passenger for said flight #981 originating in Japan, ultimately destined for Guam.

10. On or about July 20, 2002, said aircraft had departed from Japan, carrying ROBERTO J. DEL RSOSARIO as a ticketed passenger on said flight.

11. While on said flight ROBERTO J. DEL ROSARIO suffered severe injuries which were proximately caused by the negligence and wrongdoing of the Defendant JAPAN AIRLINES INTERNATIONAL CO. LTD..

12. Defendant through its employees and agents, was negligent and breached its duty to ROBERTO J. DEL ROSARIO, in the following manner:

a. Defendant through its agents and/or employees, failed to take adequate measures to secure the airlines' equipment during flight operations.

b. Defendant through its agents and/or employees, failed to take adequate measures to protect the safety and well-being of ROBERTO J. DEL ROSARIO.

c. Defendant through its agents and/or employees, failed to render, provide and/or secure necessary immediate medical attention for ROBERTO J. DEL ROSARIO.

d. Defendant failed to furnish the subject aircraft with sufficient medical equipment and safety devices and measures.

e. Defendant by and through its agents and or employees, departed from accepted airline industry standard practice in failing to take adequate measures to protect the safety and well-being of the ticketed passenger, ROBERTO J. DEL ROSARIO.

13. As a direct and proximate result of the negligence and carelessness of the Defendant, ROBERTO J. DEL ROSARIO suffered severe and grievous injuries and/or the aggravation of a pre-existing condition and sustained physical and mental pain and suffering, anguish, grief, humiliation, personal inconvenience, loss of the capacity for the enjoyment of life.

14. The cause of the severe and grievous injuries, the injuries themselves and/or the aggravation of the aforementioned pre-existing condition suffered by ROBERTO J. DEL ROSARIO constitutes an "accident" within Article 17 of the Warsaw Convention.

15. The accident was the result of willful misconduct on the part of Defendant.

16. The accident caused the aforementioned injuries and/or the aggravation of the aforementioned pre-existing condition.

17. The above described actions of the Defendant was a cause of the aforementioned injuries and/or the aggravation of the aforementioned pre-existing condition.

18. ROBERTO J. DEL ROSARIO as a proximate result has incurred medical expenses, and suffered emotional and physical grievous pain and discomfort, loss of enjoyment of life, and lost income, all in an amount to be determined at trial:

- a. as a direct and proximate result of the Defendant's negligence described herein;
- b. as a causational result of the accident;
- c. as a direct and proximate result of the accident; and/or
- d. as a causational result of the above-described actions and conduct of the Defendant.

19. The foregoing actions and conduct by Defendant through its employees and agents, exhibited a callous, cruel, careless, oppressive, willful and/or reckless indifference to the safety, welfare, and well being of ROBERTO J. DEL ROSARIO. By reason of the conduct described herein, Defendant should be compelled to compensate Plaintiff with punitive damages in the amount of \$3 million.

## **COUNT II – LOSS OF CONSORTIUM**

20. Plaintiffs re-allege and incorporate by reference paragraphs 1-19 above.

21. At all times herein relevant, Plaintiffs ROBERTO J. DEL ROSARIO and MELANIE DEL ROSARIO were and are legally married as husband and wife and enjoyed respective normal marital relationships prior to the accident.

22. Prior to the injuries caused by the negligence of Defendant, Plaintiff ROBERTO J. DEL ROSARIO was able to and did perform his duties as a husband to

Plaintiff MELANIE DEL ROSARIO was able to provide love, comfort and companionship to his wife, Plaintiff MELANIE DEL ROSARIO.

23. As a direct and proximate result of ROBERTO J. DEL ROSARIO's injuries as set forth herein, Plaintiff MELANIE DEL ROSARIO has been deprived of the spousal love, consortium, affection, services, support , society and comfort of her husband, ROBERTO J. DEL ROSARIO.

24. As a further direct and proximate result of the negligence of Defendant, Plaintiff was forced to suffer and endure past and future emotional and mental harm, pecuniary losses, loss of comfort, loss of services love and affection, hedonic damages, loss of enjoyment of life, society and protection and loss of spousal consortium, all in an amount to be determined at trial.

#### **PRAYER**

WHEREFORE, Plaintiffs pray for relief against the Defendant as follows:

1. In all Counts, for General and Special Damages to be determined according to proof at the time of trial;
2. In Count II for exemplary and punitive damages in the amount of \$3 million.
3. For costs of suit, attorney fees according to law, and pre-judgment interest according to law;
4. For such other and further relief as the Court deems just and proper.

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**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a jury trial in the above-entitled action.

LAW OFFICES OF GORMAN & GAVRAS

Date: June 7, 2004

for  
By:



WILLIAM L. GAVRAS, ESQ.  
Attorneys for Plaintiffs  
ROBERTO J. DEL ROSARIO and  
MELANIE DEL ROSARIO